No. 07-188

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

BARBARA J. ANDERSON,

Petitioner,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE TENNESSEE COURT OF APPEALS, MIDDLE DIVISION

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Watchtower Bible and Tract Society of New York, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Watch Tower Bible and Tract Society of Pennsylvania has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Kingdom Support Services, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Christian Congregation of Jehovah's Witnesses has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent, Religious Order of Jehovah's Witnesses has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

In May 2002, Mrs. Anderson met with elders of her congregation to discuss their concerns about her turning away from her faith. (Pet. App. 8) She refused to meet with them a second time and was thereafter disfellowshipped (excommunicated) as a member of the congregation. (Pet. App. 8) In July 2002, this decision was upheld by a church appeal tribunal. (Pet. 6) Thereafter, the announcement "Barbara Anderson has been disfellowshipped" was made at the local congregation. (Pet. 7)

Mrs. Anderson brought a lawsuit for "wrongful disfellowshipping." (Pet. App. 118) All the alleged violations of Tennessee tort law on which the lawsuit was based were predicated on her contention that she committed no spiritual violation and thus was wrongfully disfellowshipped. (Pet. App. 103, par. 73; 104, par. 80; 106, par. 86; 108, par. 94; 109, par. 98; 114, par. 120; 115, par. 125; and 117, par. 131)

The Tennessee Court of Appeals held that "Tennessee recognizes no cause of action for wrongful expulsion from a religious organization." (Pet. App. 24) It thus held that the trial court should have dismissed all of Petitioner's claims, as they were all predicated on the alleged wrongful expulsion. (Pet. App. 2) On May 14, 2007, the Tennessee Supreme Court denied Mrs. Anderson's application for permission to appeal. (Pet. App. 1)

REASONS FOR DENYING THE PETITION

I. This Court Lacks Jurisdiction to Review a State Court Decision Based on Independent and Adequate State Common Law Grounds.

The Petition for Writ of Certiorari must be denied since this case is not within this Court's appellate jurisdiction. Title 28 U.S.C. § 1257(a) does not permit review of a state court's final judgment when that judgment is predicated on state law. The judgment of the Tennessee Court of Appeals was based upon state common law. Therefore, this Court lacks jurisdiction to review the judgment and the Petition must be dismissed.

Petitioner's complaint posed no issue involving a state statute. "Because a common-law cause of action cannot be said to be a 'statute' for purposes of § 1257(2), this case is not within our § 1257(2) appellate jurisdiction." *Local 926, Union of Operating Engineers v. Jones*, 460 U.S. 669, 675 n.7 (1983). Although commenting on 28 U.S.C. § 1257(a)'s predecessor, this Court's analysis that the common law is not the equivalent of a "statute" to convey jurisdiction, underscores that Petitioner's common-law claims cannot serve as a predicate for this Court's jurisdiction. Therefore, this is not a matter "where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." 28 U.S.C. § 1257(a).

The complaint against the elders and national religious organization put forth causes of action exclusively grounded in Tennessee common law. Two of these—fraud and defamation—serve as the basis of Petitioner's questions presented for review. The Tennessee Court of Appeals applied Tennessee law in dismissing these claims. Thus, this Court lacks jurisdiction to review that decision.

A. Dismissal of the common law tort of fraud was based solely on Tennessee's common law.

Petitioner's first question presented for review focuses on "a cause of action by the church member against the church for common law fraud." (Pet. i) In dismissing this count of the Amended Complaint, the Tennessee Court of Appeals explicitly based its decision on state common law:

> In Tennessee, the common law tort of fraud consists of an intentional misrepresentation of a material fact or producing a false impression in order to mislead another or to obtain an undue advantage over him; and, the misrepresentation must have been made with knowledge of its falsity and with a fraudulent intent, must be related to an existing fact which is material, and the plaintiff must have reasonably relied on the misrepresentation to his injury. *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66-67 (Tenn. 2001). The Andersons' allegations do not meet these elements.

(Pet. App. 39-40)[1]

Since this count was dismissed solely upon state common-law grounds, this Court lacks jurisdiction to review the first question presented based on the common-law tort of fraud.

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1. Petitioner's husband, A. Joseph Anderson, was a plaintiff in the lawsuit below. However, he was not a party to the application for permission to appeal to the Tennessee Supreme Court. He is not a party to this Petition.

B. Dismissal of the defamation claims was solely based on Tennessee common law.

Petitioner's second question presented is based upon common-law defamation. This Court has no jurisdiction to review this question as the Tennessee Court of Appeals' dismissal of the defamation claims was based on state common-law grounds.

> To establish a claim for defamation in Tennessee, a plaintiff must establish that the defendant published a statement with knowledge that it was false and defaming to the plaintiff, with reckless disregard for the truth of the statement, or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Memorial Hospital*, 995 S.W.2d 569, 571 (Tenn.1999); *Press, Inc. v. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978) . . .
>
> The Andersons assert that some of the defendant church officials made statements to the general public through the mass media that defamed Barbara Anderson. Thus, by claiming that the Church's statements about their disfellowshipping were defamatory, the Andersons necessarily claim that the statements were false. However, their complaint does not quote in full any of the public statements that include language alleged to be defamatory, nor were copies of the allegedly defamatory articles or tapes of the broadcasts attached to their complaint.
>
> Some of the allegations, however, do include some of the specific words used. One allegation states that one of the named defendants stated to a

> newspaper reporter that Ms. Anderson, along with three other church members, "were to be summoned before congregation tribunals on charges of 'various spiritual violations' for the purpose of determining whether they should be 'disfellowshipped' for 'spiritual violations.'" Another allegation states that the named defendant stated to another reporter that "the local judicial proceedings against these members 'may focus on sins unrelated to public comments on sexual abuse' within the Jehovah's Witnesses' organization."
>
> The complaint further alleges that the defendant who made these statements knew that Ms. Anderson "had not committed any spiritual violations and that no grounds for disfellowshipping existed" and that he also knew that the congregational tribunals were being conducted as part of the Church's plan to destroy the credibility of Ms. Anderson so as to frustrate her efforts to "prevent the church from sheltering child abusers."

(Pet. App. 68-71 (footnotes omitted))

In contrast to Petitioner's assertion that "church officials defamed"[2] her, the court below actually held that, under state

2. As the Tennessee Court of Appeals noted, Petitioner did not quote fully any allegedly defamatory language. To overcome this, Petitioner makes statements not supported by the record, e.g. "church officials defamed Plaintiff." (Pet. 2) Further, she mischaracterizes the nature of the Amended Complaint's allegations: "Mr. Semonian was referring to Ms. Anderson as one of the persons charged with fornication, extortion, and drunkenness and who was unrepentant (Cont'd)

law, a secular court could not determine whether statements about religious matters were defamatory because a secular court could not determine the truth or falsity of whether one committed a spiritual deviation.

> Thus, according to the complaint itself the statements alleged to be defamatory refer to religious reasons for disfellowshipping and shunning in general, and reference was made to sins and spiritual violations that could have referred specifically to Ms. Anderson. According to the complaint, in the Congregation of Jehovah's Witnesses, such violations include stirring up unrest, creating dissension, or causing doubt about the Church. These were the charges brought against Ms. Anderson and the reason given for her expulsion from the church. In order to determine whether the statements at issue were defamatory, a court would be required to determine, among other things, if they were false. We cannot see how such an inquiry could be conducted and adjudication made without encroaching on religious matters. Additionally, to determine the falsity of the statements, a court would need to examine the correctness of the decision of

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(Cont'd)

about committing these sins." (Pet. 6) However, the Amended Complaint stated: "David Semonian . . . made comments to the media that 1 Corinthians chapter 5 in the Bible is the scriptural basis for the practice of disfellowshipping members who are unrepentant *about such serious sins as* fornication, extortion, and drunk[enness]." (Pet. App. 99 (emphasis added)) Further, the Amended Complaint does not allege that David Semonian in fact made any statement specifically about Petitioner.

> the Church tribunal that she had committed violations meriting expulsion. This we cannot do.

(Pet. App. 72-73)

To further underscore their state law dismissal of the defamation counts, the Court of Appeals insightfully observed that such claims were merely a repackaging of Petitioner's wrongful disfellowshipping claims:

> The last two paragraphs of the complaint's section on the defamation claims are revealing. They include statements that "Plaintiff has not had a falling away of her faith, but is most concerned about the welfare of her religion" and the problems she perceives in the Church's handling of child sexual abuse reports. Further, she states that she "is not taking issue with her church's doctrine regarding disfellowshipping with resultant shunning . . . but is asking for relief for wrongful disfellowshipping . . . due to the church's hierarchy being motivated to disfellowship Plaintiff by reasons unrelated to the dictates of their religion."
>
> These statement make clear that, in essence, the defamation claims are simply a restatement of the Andersons' basic claim that the disfellowshipping of Ms. Anderson was wrongful and not because of her violation of any Church tenets, but, instead, for other reasons related to her activities. We have already determined that the wrongful disfellowshipping and related claims based on the same argument are precluded from court adjudication. The same reasons and legal principles

> dictate that the defamation claims are likewise outside the courts' authority to adjudicate.

(Pet. App. 73)

As the Tennessee Court of Appeals held, all of the counts in the Amended Complaint—including the defamation claims—were predicated upon the notion that Petitioner was wrongfully disfellowshipped. That court correctly held that determining whether a congregant violated church tenets was beyond the purview of secular court review. As such, the Petition should be dismissed.

C. Dismissal of Petitioner's lawsuit was based on Tennessee law.

Petitioner's church membership dispute cannot be adjudicated as a result of well-established Tennessee law. The Tennessee Court of Appeals well articulated the nub of Petitioner's lawsuit:

> Most of the Andersons' claims stem from their disfellowshipping and the manner in which they were deprived of their memberships in the Jehovah's Witnesses. They allege the disfellowshipping itself was wrongful, and most of their other claims are based on consequences directly related to or flowing from that action. We begin with the fundamental issue of the Andersons' expulsion from the Congregation and their claims that this expulsion was wrongful.
>
> The Church argues that the freedom of religious bodies to determine their own membership is such

> a fundamentally ecclesiastical matter that courts are prohibited from adjudicating disputes over membership or expulsion. We agree.

(Pet. App. 20-21)

The Tennessee Court of Appeals held that long-established Tennessee law precluded a state court review of a religious decision:

> Tennessee recognizes no cause of action for wrongful expulsion from a religious organization. Our courts will not review such decisions, but will take as binding the decision of the church. A party aggrieved by such action has no redress in the courts, but must look instead to the organization itself. *Martin v. Lewis*, 688 S.W.2d at 74; *Bentley v. Shanks*, 348 S.W.2d at 904. Otherwise, courts would be called upon to determine the correctness of a church's decision about whether a person had complied with religious doctrine and practices . . .
>
> Consequently, we find there is clear and controlling authority that Tennessee courts have no authority to decide questions of membership or the correctness of expulsion from membership. In 1892, our Supreme Court stated it had found "no reported case where any civil court in this country has undertaken to overrule the fact of excommunication upon any ground whatever." *Nance v. Busby*, 18 S.W. at 879. We have also found no cases, in this jurisdiction or elsewhere, where a court exercised jurisdiction to adjudicate whether a church member was wrongfully expelled.

(Pet. App. 24-25)

It is true that the First Amendment and this Court's ecclesiastical abstention analysis was alluded to; however, this Court does not obtain jurisdiction by virtue of this. This Court has consistently held that there is no review of state court decisions resting on state law grounds that are independent of any federal question and adequate to support the judgment. *Lambrix v. Singletary*, 520 U.S. 518, 522-23 (1997); *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

According to the Tennessee Court of Appeals,

> [t]he Tennessee Supreme Court similarly held long ago that courts of this State are without jurisdiction to inquire into or supervise the decisions of religious organizations. *Nance v. Busby*, 18 S.W. at 881, citing *Watson*, 80 U.S. at 727. Tennessee courts have continued to refuse to hear disputes that are perceived to be purely ecclesiastical in nature. *Travers v. Abbey*, 58 S.W. 247, 247-48 (Tenn. 1900) (holding that dispute over removal of pastor did not involve property or personal rights, related to governance of and discipline by church, and courts would not review the decisions of ecclesiastical judicatures); *Martin v. Lewis*, 688 S.W.2d 72, 73 (Tenn. Ct. App. 1985).
>
> Thus, decisions by the governing bodies of religious organizations on matters related to doctrine, faith, or church governance and discipline are not reviewable by civil courts. *Mason v. Winstead*, 265 S.W.2d 561, 563 (Tenn. 1954) (holding that in ecclesiastical matters, church tribunals have exclusive authority without interference from the civil courts). Stated differently, courts will defer to

> the highest tribunal in a religious organization on questions of discipline, faith, or ecclesiastical rule, custom, or law and will not interfere with such decisions . . .

(Pet. App. 12-14 (footnotes omitted))

As such, this Petition should be denied.

II. There is No Compelling Reason to Grant the Writ Since There Exists No Substantial or Unsettled Federal Question Presented by This Church Membership Dispute.

Petitioner endeavors to establish this Court's jurisdiction by raising the notion that this case presents an important federal question. The federal question Petitioner posits is not presented in this case.

There are many areas of secular life in which the government plays a necessary role in its regulating of citizens' dealings with one another. This includes resolving disputes over property, resolving disputes over contracts, resolving allegations of employment discrimination, and resolving allegations of criminal conduct (such as the abuse of children). However, there are spiritual areas of life in which the government should play no role. The Tennessee and federal constitutions assure that a person's spiritual relationship with his church is one area of life where civil courts should not become entangled.

Of course, religious organizations are not totally immune from governmental regulation. When religious organizations buy property, enter into contracts, hire employees, commit

crimes, or engage in other such secular matters, they are governed by the laws that also apply to secular organizations. However, there is no law that regulates membership in a religious organization, nor could there be.

In an effort to create a federal question, Petitioner, like other disgruntled ex-congregants from various other churches, seeks refuge in dicta found in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929) to support her proposition that it would be appropriate for the government to regulate the interaction of religious organizations and their members when members claim they have been a victim of "fraud" or "collusion." However, *Gonzalez's* holding and the entire body of this Court's decisions show that what Petitioner contends is a broad "fraud" or "collusion" exception to the Ecclesiastical Abstention doctrine is nothing of the sort, and does not apply to disputes involving church member discipline.

Gonzalez involved a dispute over property and indicated that in matters of civil rights the First Amendment may not be an absolute bar to secular court review of religious decisions involving secular matters.

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Gonzalez, 280 U.S. 1 at 7-8. The issue before the *Gonzalez* Court was the right to receive income—a civil right. The *Gonzalez* Court distinguished between the civil (or secular)

and the ecclesiastic. In secular matters, the Court indicated that—unlike ecclesiastic matters—the First Amendment might not be a complete bar to secular court review.

This Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), again considered whether the Ecclesiastical Abstention doctrine allowed for any limited secular review of church property disputes, which involved a dispute over diocese property and assets. The Court noted that "*Gonzalez* first adverted to the possibility of 'marginal civil court review.'" *Serbian*, 426 U.S. at 712. However, the *Serbian* Court held "the suggested 'fraud, collusion, or arbitrariness' exception to the *Watson* rule was dictum only." *Serbian* then rejected any arbitrariness exception to the Ecclesiastical Abstention doctrine in the field of property disputes. *Id.* The Court did not address fraud or collusion since neither were asserted in the case.

In *Jones v. Wolf*, 443 U.S. 595 (1979), another property dispute case, this Court addressed the possible existence of a "fraud" or "collusion" exception to the Ecclesiastical Abstention doctrine. Its holding makes clear that this potential exception would not, and could not, apply outside of property disputes.

Jones involved "a dispute over the ownership of church property." *Id.* at 597. The Court also noted that "'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.'" *Id.* at 602 (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)). The Court permitted a trial court to engage in this circumscribed review of a property dispute by use of "neutral principles of law." The neutral principles approach allows "'no inquiry into religious doctrine.'" *Jones* at 603

(quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970)). "The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones* at 603. Thus, the use of neutral principles to resolve a dispute over the ownership of real property was the context of the Court's "fraud" or "collusion" comment. *Id.* at 609 n.8. In Petitioner's case, her claims of "fraud" relate, not to any property dispute, but to her claim that she was wrongfully disfellowshipped. The *Jones* Court made it clear that the Ecclesiastical Abstention doctrine was not abrogated by stating that a court cannot "pass on questions of religious doctrine, and to usurp the function" of an ecclesiastical body. *Id.* at 609.

It is not possible for a court to exercise jurisdiction over a church disciplinary dispute by applying "neutral principles" of law. No such principles exist when the discipline is based on the Church's interpretation of Scripture. Not surprisingly, Petitioner does not attempt to explain how calling the elders as witnesses to open their Bibles and explain how and why they concluded, based on the Scriptures, that she was guilty of spiritual violations is anything but a religious matter and, as such, a constitutionally prohibited inquiry.

While the government has a proper role in resolving property disputes between vying religious factions and in resolving employment discrimination charges against religious employers,[3] it has no constitutionally feasible role

3. Unable to find any case law anywhere supporting their view that secular courts may review matters of internal church discipline, Petitioner is forced to rely on an employment discrimination case (Cont'd)

in resolving disputes over church member discipline. If a court were to make a judgment that the reasons for excommunication were "fraudulent," it would—by necessity—have determined what are, and are not, legally acceptable reasons to expel a member from a church. Such a state determination of a quintessential religious matter is precisely what the Establishment Clause forbids. The church, and not the state, establishes standards to determine who is, and who is not, a member of the church.

Since *Serbian* was decided in 1976, no state or federal court anywhere in the United States has exercised jurisdiction over a church disciplinary dispute—even when the plaintiff alleged that the discipline was the product of church "fraud" or "collusion." Thus, it is not surprising that Petitioner cited no authority in support of her argument that there is an exception to the Ecclesiastical Abstention doctrine within the context of religious discipline. The reality is that all courts in the United States have uniformly refused to exercise jurisdiction over disputes involving "church polity" or "church administration," *Serbian*, 426 U.S. at 710, including

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(Cont'd)

involving a teacher who brought employment discrimination claims against a religious school. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986). The hiring of a teacher at religious schools may be a secular matter. Petitioner would like to draw a parallel between the hiring and firing of employees of religious schools and the disciplining of members of a church. However, there is no equivalent in the secular world to a religion's discipline of its members for violating the Bible's standards of conduct, which the former congregants agreed to adhere to when becoming members of the religion. While the government has a role to play in protecting citizens' rights against age, sex, or race discrimination in employment, the Tennessee and federal constitutions forbid such regulation in the context of discipline of a church member.

attempted actions alleging claims of "fraud" or "collusion." Thus, there exists no substantial and unsettled question of federal law requiring this Court's review.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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